BRADLEY v. McKEE.

Case No. 1,784.
[5 Cranch, C. C. 298.][1]

Circuit Court, District of Columbia. March Term, 1837.

EVIDENCE—COMPETENCY—PROCEEDINGS OF CORPORATION—NEGOTIABLE INSTRUMENTS—EVIDENCE—BURDEN OF PROOF—CORPORATIONS—OFFICERS AND AGENTS—DISSOLUTION—USURY—WHAT CONSTITUTES.

1. The proceedings of a corporation aggregate may be given in evidence against a party, not a member of the corporation, although there should be no evidence that such notice of the meeting, as the charter requires, had been given.

2. A promissory note, signed by A. B. as agent of an incorporated manufacturing company, does not, upon the face of it, import a personal obligation; and it is not incumbent on the defendant to show his authority to make such a note; nor the extent of his powers; nor that the money was applied to the use of the company; nor that he declared it was for their use; the burden of proof, in such case, is upon the plaintiff.

3. If, at the date of the note, or at the time it became payable, the company had ceased to do business as a company, the corporation was not thereby dissolved, nor the defendant thereby rendered personally responsible upon the note; and if, after the making of such note, the corporate property was sold by the company, who ceased to do business as a corporation, and the stockholders made a distribution of the effects of the corporation, and apportioned the debts due by the company to be paid by such individual stockholders, the corporation did not thereby cease to exist, but was capable of being bound by such a note.

4. If it was the usage and custom of the banks and exchange-brokers in that part of the country where the note was made and indorsed, to discount such paper at one per cent. for sixty days, and to charge an additional premium of from a half of one per cent, to one per cent, for exchange on eastern paper, when such paper was loaned, and to charge the likediscount and premium for the renewal of the notes given therefor; such a transaction, if bona fide and not intended as a cloak for usury, is not usurious.

5. Whether the transaction was bona fide, and not intended as a cloak for usury, is a question of fact to be left to the jury under all the circumstances of the case.

6. If a note be given by a person, bona fide, as agent of an incorporated manufacturing company, for a loan of money to the company, and the same was known to the person who discounted it, at the time of his discounting it, the agent is not personally liable upon the note.

At law. Assumpsit [by W. A. Bradley] against [Reddick McKee] the maker of the note mentioned in the preceding case, which was in this form: "Wheeling, March 22d. 1834. Sixty days after date, I promise to pay to the order of Richard Simmes, at the North Western Bank of Virginia, $4,000, without defalcation, for value received. R. McKee, Agent Wheeling Cotton Manufacturing Company. $4,000." Indorsed: "Richard Simmes, Knox & McKee, M. Nelson, W. B. Atterbury."

Upon the trial, Mr. Brent, for the defendant, contended that he was the regularly appointed agent of the Wheeling Cotton Manufacturing Company, incorporated by the legislature ofVirginia, and, as such, authorized to make the note; that it was made for the

company, and legally bound them; and that it was not his private, individual act. Rathbon v. Budlong, 15 Johns. 1. Mr. Brent offered to read to the jury the minutes of the proceedings of a meeting of the company, (proved by a witness to be such.) at which the defendant was appointed agent.

Mr. Bradley objected that the books of the company are not evidence against a stranger. Starkie, Ev. pt. 2, p. 298. That there was no evidence that ten days' notice of the meeting had been given, as required by the charter.

Mr. Brent, contra, relied upon the opinion of the supreme court of the United States, in the case of Bank of U. S. v. Dandridge, 12 Wheat. [25 U. S.] 69; that the law "presumes that every man, in his private and official character, does his duty until the contrary is proved; it will presume that all things are rightly done, unless the circumstances of the case overturn this presumption, according to the maxim, omnia prae-sumuntur rite et solemniter esse acta, donec probetur in contrarium." "That persons acting publicly, as officers of the corporation, are to be presumed rightfully in office; acts done by the corporation, which presuppose 1 the existence of other acts to makethem I legally operative, are presumptive proofs of the latter," &c.

The court overruled the objection, and permitted the evidence to go to the jury.

Mr. Brent, for the defendant, then offered to read to the jury the deposition of M. Nelson.

Mr. Bradley, for the plaintiff, objected that the witness was one of the intermediate indorsers, and could not be permitted to discredit the note which he had indorsed. Caton v. Lenox, 5 Rand. [Va.] 32.

Mr. Brent replied that the rule was only applicable to mercantile negotiable paper, which this court has just decided this note not to be. Blagg v. Phenix Ins. Co. [Case No. 1,477]. And the plaintiff had cross-examined the witness, and therefore cannot now object to his competency. Harrison v. Courtauld, 1 Russ. & M. 428.

The court overruled the objection, and the deposition, was read.

Mr. Bradley then contended that the note is not, on its face, a company note, but purports to be the individual note of the defendant; and that the burdon of proof is on him to show his authority to bind the company by such a note. White v. Skinner, 13 Johns. 308, 311; Randall v. Van Vechten, 19 Johns. 60.

Mr. Brent, contra. The plaintiff produces a note signed by the defendant, as agent of thec ompany, and the defendant proves that he was their agent; the burden of proof is now on the plaintiff to show that the defendant is personally liable. Theo. Ag. 333;Wyman v. Gray, 7 Har. & J. 409; 2 Kent, Comm. 614. Whereupon, Mr. Bradley, for the plaintiff, moved the court to instruct the jury that the note upon which this suit is brought imports, upon its face, a personal obligation, and the defendant is personally liable therefor, unless they shall find, from the evidence, that the defendant was authorized to bind the Wheeling Cotton Manufacturing Company by such contract, declared their names, and professedto act for them in the execution of it; and signed the same in pursuance and performance of his said authority. Which instruction the court refused to give.

Mr. Bradley then further moved the court to instruct the jury, that the said corporation is but an agent, exercising only delegated authority; that all agents appointed by it must act within the object and scope of the charter of the said company; that the appointment of such subagent must be clearly proved, and the extent of his powers, in the particular matter, clearly defined; and if the jury shall be satisfied, by the evidence, that the promissory note, in the declaration mentioned, was given for a loan of money, they must further find that it was for a loan of money to the said company, for its corporate objects, and that the defendant was fully authorized to obtain such loan, and to bind the said company, by his signature to the said note, and declared, or it was understood between the lender and such agent, that it was for the use of the said company; otherwise, the defendant is personally liable. Which instruction the court also refused to give.

Mr. Bradley then further moved the court to instruct the jury, that, if from the evidence they shall be of opinion, that on the 22d day of March, 1834, or at any time before that

day, or before the 24th day of May, 1834, the Wheeling Cotton Manufacturing Company had ceased to do business as a company, or had sold all the property of the company, and ceased to do business as a company or corporation, then the said corporation was dissolved, and the defendant is personally and individually responsible on the note upon which this suit is brought Which instruction the court also refused to give.

Mr. Bradley then further moved the court to instruct the jury, that, if from the evidencethey shall find, that, in the summer of 1834, after the making of the said promissory note, the corporate property of the company was all sold by the said company; that the said company ceased to do business as a corporation, and the stockholders therein made a distribution of the effects of the said corporation, and apportioned the debts due by the saidcompany, to be paid by such individual stockholders, then there is nobody in esse which can be sued as the principal or which the defendant, as agent, could make responsible by the signature to the said note, and he, the defendant, is personally responsible therefor. Which instruction the court also refused to give. 'Mr. Bradley then further moved thecourt to instruct the jury, that if from the evidence they shall be of opinion, that, in the years 1833 and 1834, and for a long time before, it was the usage and custom of the banks and exchange-brokers, in that part of the state of Virginia in which the town of Wheeling is, to discount paper at and after the rate of one per cent for sixty days; and, in addition thereto, to charge a premium for exchange on eastern paper, varying from an halfto one per cent when eastern paper was loaned; and also to charge the same discount andpremium for the renewal of the notes given therefor; and that the said transaction was bona fide, and not intended as a cloak for usury, this case was not usurious. Mr. Brent, contra, cited New York Firemen's Ins. Co. v. Ely, 2 Cow. 705. But the court gave the instruction.

Mr. Bradley then moved the court to instruct the jury, that, if they shall be of opinion from the evidence that the consideration given for the promissory note upon which this suit is brought, was a loan negotiated by William B. Atterbury to the Wheeling Cotton Manufacturing Company, by Reddick MeKee, agent thereof, or by any other person acting on behalf of the said

company; and that the terms of the said loan were one per cent, for sixty days' discount for forbearance, and one half per cent. for exchange on eastern funds; and that such was the usage and custom of the banks and exchange brokers in that part of the country where the said loan was made, in the years 1833 and 1834; and that the same rate of discount and premium, or commission, was charged upon each renewal of such loans, then the said contract was bona fide, and not usurious. Com. Usury, 133-135. Which instruction the court refused to give.

Mr. Brent, for the defendant, then moved the court to instruct the jury, that upon the whole evidence the plaintiff is not entitled to recover in this action, even if the defendant had no authority to bind the company. Which instruction the court refused to give. Bu-tupon the motion of the defendant's counsel, instructed the jury, that if they believefrom the evidence that the note, on which this suit is brought, was given by the defendant bona fide as agent for the Wheeling Cotton Manufacturing Company, for a loan of money to the said company, and that the same was known to the said Atterbury at the time he discounted the said note, the plaintiff is not entitled to recover in this action. New York Firemen's Ins. Co. v. Ely, 2 Cow. 703.

Mr. Brent, for the defendant, cited Theo. Ag. 303, 337; Long v. Colburn, 11 Mass. 97; Ballou v. Talbot, 16 Mass. 461; Harper v. Little, 2 Greenl. 14; 2 Kent. Comm. 631.

Mr. Bradley cited 2 Liverm. Prin. & Ag. 247; Buffum v. Chad wick, 8 Mass. 103; Odiorne v. Maxcy, 13 Mass. 178; Batty v. Carswell, 2 Johns. 48; Thacher v. Dinsmore, 5 Mass. 299.

Verdict for defendant. The plaintiff took bills of exception, but has not prosecuted a writ of error.

[NOTE. For determination of an action on the same note by an indorsee acainst a remote indorser thereof, see Bradley v. Knox, Case No. 1,782.]

[1] [Reported by Hon. William Cranch, Chief Judge.]

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